

**ORIGINAL**

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**FILED**

NOV 27 2012

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

**DMR**

DANIEL SHAHAR, individually and  
 on behalf of all other s similarly  
 situated,

Plaintiff,

v.

HOTWIRE, INC., and EXPEDIA,  
 INC.

Defendants.

Case No. **12 6027**

**COMPLAINT**

**CLASS ACTION**

- (1) BREACH OF CONTRACT
- (2) CONSUMER LEGAL  
REMEDIES ACT
- (3) FALSE ADVERTISING LAW
- (4) UNFAIR COMPETITION LAW

1 COMES NOW Plaintiff Daniel Shahar, through his attorneys, and for his  
2 Original Class Action Complaint against Defendants, alleges as follows, based on  
3 first-hand personal information as to all acts and events involving him, and on  
4 belief and information as to all other facts:  
5

6  
7 **I. PARTIES**

8 1. Plaintiff Daniel Shahar ("Shahar") is a citizen and resident of the State  
9 of California, residing in Woodland Hills, Los Angeles County, California.

10 2. At all times relevant to this lawsuit, Defendant Expedia, Inc., was a  
11 corporation that was a citizen of California and Washington, incorporated in  
12 Washington, with its principal place of business in California. Expedia, Inc. may  
13 be served with process by serving National Registered Agents, Inc., 2875 Michelle  
14 Drive, Suite 100, Irvine, CA 92606.  
15

16 3. At all times relevant to this lawsuit, Defendant Hotwire, Inc., was a  
17 corporation that was a citizen of California and Delaware, incorporated in  
18 Delaware, with its principal place of business in California. Hotwire, Inc., is an  
19 operating company of Expedia, Inc., and may be served with process by serving  
20 National Registered Agents, Inc., 2875 Michelle Drive, Suite 100, Irvine, CA  
21 92606.  
22

23 4. Defendants Expedia, Inc. and Hotwire, Inc. are collectively referred to  
24 herein as "Hotwire."  
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## II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1332(d)(2) because there are members of the Plaintiff class who are citizens of States other than California, and the aggregate amount in controversy exceeds five million dollars.

6. Venue is proper within this District pursuant to 28 U.S.C. §1391 because a substantial part of the events giving rise to this claim occurred in this District. At all relevant times, Hotwire, Inc. was headquartered in San Francisco, California, and the acts that are the subject of this litigation took place in San Francisco, California.

## III. FACTUAL BACKGROUND

7. Hotwire operates an online travel website that permits the public to, among other things, purchase airfare tickets, purchase vacation packages, rent hotel rooms, and rent cars.

8. Hotwire enters into contracts with its customers, via its website, wherein Hotwire and its customer agree that Hotwire will provide the contracted services (e.g., air travel, hotel rental, or car rental) for a certain price and under certain terms.

1           9. Hotwire does not actually operate any airlines, hotels, or car rental  
2 agencies itself, but rather sells air travel, hotel, and car rentals provided by other  
3 companies to its customers. Hotwire profits by charging its customers a higher  
4 price than it pays the airline, hotel, or car rental agency for the services.  
5

6           10. Hotwire attempts to offer, or appear to offer, favorable terms in order  
7 to entice its potential customers to purchase these travel-related products and  
8 services through Hotwire rather than directly from the airline, hotel, or car rental  
9 company.  
10

11           11. In fact, Hotwire often misrepresents the price for the services it sells  
12 by omitting substantial costs that the customer will have to pay to complete the  
13 customer's purchase of the service.  
14

15           12. These misrepresentations are material to a reasonable consumer in  
16 deciding whether to purchase services from Hotwire. Hotwire makes these  
17 misrepresentations in bad faith, knowing and intending that consumers will be  
18 deceived.  
19

20           13. As a result, Hotwire frequently enters into contracts with customers to  
21 provide services for a certain price, or estimated price, then when the customer  
22 arrives at the airline ticket counter, hotel check-in desk, or car rental desk, he learns  
23 for the first time that he will be unable to obtain the promised services for the  
24 agreed upon price, but instead must pay significantly more.  
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1           14. By failing to ensure that its customers received the promised services  
2 at the agreed-upon price, Hotwire breached its contract with its customers.

3  
4           15. On June 12, 2012, Shahar entered into a contract with Hotwire to rent  
5 a compact car for five days from Dollar Rent A Car at the Ben Gurion airport in Tel  
6 Aviv, Israel. The car rental was confirmed, and Shahar was given a Hotwire  
7 itinerary and a Dollar confirmation code. The contract between Hotwire and  
8 Shahar set forth a class of car, a pick-up date and time, a drop-off date and time, an  
9 unlimited mileage provision, a representation regarding the features the vehicle  
10 would have, a list of acceptable payment options, a minimum age for the driver,  
11 terms regarding the location of pick-up and drop-off, a daily rate for the rental  
12 (\$14), a length of rental (5 days), a list of the estimated taxes and fees (\$0), and an  
13 estimated trip total amount (\$70).  
14  
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16

17           16. Shahar reasonably relied on the estimated trip total amount in deciding  
18 to purchase car rental services from Hotwire.  
19

20           17. When Shahar arrived at the designated pick-up location, at the agreed  
21 upon pick-up date and time, he was informed for the first time that he would not be  
22 able to rent the car for the agreed-upon price of \$70, but rather would have to pay  
23 an additional \$60 for "3 PLC" insurance, 1 cent for airport fee, 8 cents for rounding  
24 currency, and \$20.82 for VAT taxes. He was told that the "3 PLC insurance" was  
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1 required due to a mandatory insurance payment for car rental in Israel. The total  
2 price came to \$150.91, more than double the agreed-upon price.  
3

4 18. Because Shahar had already pre-paid \$70 and was stuck at a car-rental  
5 agency in a foreign country, he had no choice but to pay more than the contracted  
6 amount.  
7

8 19. By failing to provide Shahar the car rental based on the terms agreed  
9 upon in their contract, Hotwire breached its contract with Shahar.  
10

11 20. Upon information and belief, Hotwire similarly breaches its contracts  
12 with all of its U.S. customers who use Hotwire's website to contract for cars to be  
13 picked up in Israel, as well as other foreign countries, including Costa Rica.  
14

#### 15 **IV. CLASS ACTION ALLEGATIONS**

16 21. Upon information and belief, Hotwire routinely breaches its  
17 contracts with its customers by refusing to provide the agreed services for the prices  
18 agreed upon in its contracts with its customers.  
19

20 22. Hotwire's practice of routinely breaching its contracts results in its  
21 customers having to pay more than the agreed-upon price at the time they arrive at  
22 the airline counter, hotel, or car rental agency.  
23

24 23. **Class Definition.** Pursuant to Rule 23 of the Federal Rules of Civil  
25 Procedure, Plaintiff Daniel Shahar brings this action for himself and on behalf of a  
26 class (the "Class") initially defined as follows:  
27  
28

1 All entities and persons in the United States (including its Territories and the  
2 District of Colombia) who:

3 (1) during the Class Period, made a reservation through Hotwire's website,  
4 while in the United States (including its Territories and the District of  
5 Colombia), for air travel, a hotel stay, or car rental and received a  
6 confirmation from Hotwire that included a price; and

7 (2) paid more than the quoted price for the air travel, hotel stay, or car rental,  
8 due to additional charges imposed by the airline, hotel, or car rental  
9 company.

10 The Class Period is defined as beginning four years before the filing of this  
11 Complaint to the present.

12 24. **Numerosity. Fed. R. Civ. P. 23(a)(1).** The Class members are so  
13 numerous that joinder of all is impractical. Plaintiff estimates that the Class  
14 consists of thousands of people. The names and addresses of the Class members  
15 are identifiable through documents maintained by Hotwire, and the Class members  
16 may be notified of the pendency of this action by published, mailed and/or emailed  
17 notice.  
18

19 25. **Existence and Predominance of Common Questions of Law and**  
20 **Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all  
21 members of the Class. These questions predominate over the questions affecting  
22 only individual members. These common legal and factual questions include,  
23 among other things:  
24  
25

26 a. Whether Hotwire's customers who reserve air travel, a hotel  
27 stay, or a car rental through Hotwire's website have an  
28

1 enforceable contract with Hotwire for the services described in  
2 Hotwire's confirmation;

- 3 b. Whether Hotwire's failure to provide the services described in  
4 its confirmations at the listed price constitutes breach of  
5 Hotwire's contract with its customers;
- 6 c. Whether Hotwire's failure to disclose the true cost of its services  
7 is unfair, misleading, or deceptive;
- 8 d. Whether Hotwire had a duty to disclose the true cost of its  
9 services;
- 10 e. Whether information regarding the true costs of Hotwire's  
11 services is material to a reasonable consumer;
- 12 f. Whether Hotwire is liable to its customers for the difference  
13 between the price quoted in the confirmation and the price  
14 actually charged for the services quoted in the confirmation;
- 15 g. Whether Hotwire is liable to its customers in restitution for  
16 money wrongfully obtained as a result of Hotwire's unfair,  
17 fraudulent, and unlawful acts.

18 26. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claim is typical of  
19 the claims of each Class member. Plaintiff is entitled to relief under the same  
20 causes of action as the other members of the Class. Plaintiff's claim that Defendant  
21 improperly failed to provide her with the contracted-for services at the agreed-upon  
22 price is typical of the claims of each Class member.

23 27. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate  
24 representative of the Class because his interests coincide with, and are not  
25 antagonistic to, the interests of the members of the Class he seeks to represent; he  
26 has retained counsel competent and experienced in complex class action and  
27  
28



1 consumer litigation; he intends to prosecute this action vigorously; and he has  
2 retained counsel who intend to prosecute the action vigorously and have the  
3 resources to do so. The interests of members of the Class will be fairly and  
4 adequately protected by Plaintiff and his counsel.  
5

6       28.       **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact  
7 common to the Class members predominate over questions affecting only  
8 individual members, and a class action is superior to other available methods for  
9 fair and efficient adjudication of the controversy. The issues in this litigation  
10 involve only Hotwire's obligation to provide the contracted-for services at the  
11 agreed-upon price and do not include any other potential individual disputes  
12 between putative class members and Defendants. The damages suffered by each  
13 member are such that individual prosecution would prove burdensome and  
14 expensive given the complex and extensive litigation necessitated by Defendants'  
15 conduct. It would be virtually impossible for the members of the Class individually  
16 to redress effectively the wrongs done to them. Even if the members of the Class  
17 themselves could afford such individual litigation, it would be an unnecessary  
18 burden on the Courts. Furthermore, individualized litigation presents a potential for  
19 inconsistent or contradictory judgments and increases the delay and expense to all  
20 parties and to the court system presented by the issues raised by Defendants'  
21 conduct. By contrast, the class action device will result in substantial benefits to  
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1 the litigants and the Court by allowing the Court to resolve numerous individual  
2 claims based upon a single determination on the right of Hotwire's customers to  
3 receive contracted-for services at the agreed-upon price.  
4

5       29.     **Injunctive Relief Appropriate for the Class. Fed. R. Civ. P.**  
6 **23(b)(2).** Class certification is appropriate because Defendants have acted on  
7 grounds generally applicable to the Class, making appropriate equitable injunctive  
8 relief with respect to Plaintiff and the Class members. Specifically, Plaintiff seeks  
9 injunctive relief in the form of a Court order mandating that, in the future,  
10 Defendants be ordered to accurately state the costs their customers will be charged  
11 for the contracted-for services.  
12  
13

## 14                               V. CAUSES OF ACTION

### 15                               Count One: Breach of Contract

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17       30.     Plaintiff incorporates all paragraphs of this complaint into his  
18 breach of contract cause of action.  
19

20       31.     Defendants had valid enforceable contracts with their customers  
21 requiring Defendants to charge the agreed-upon price for the services quoted in  
22 their contracts.  
23

24       32.     Each class member is in direct privity with a Defendant.  
25  
26  
27  
28

1           33. Defendants' contracts with their insureds are unambiguous and  
2 require Defendants to provide their customers with the contracted-for services at the  
3 agreed-upon price.  
4

5           34. Defendants breached their contractual obligation by refusing to  
6 provide their customers with the contracted-for services at the agreed-upon price.  
7

8           35. Defendants' breach of the contract caused the class members to be  
9 damaged by having to pay more than the agreed-upon price for the contracted-for  
10 services.  
11

12                   **Count Two: Violation of California's Consumer**  
13                   **Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*)**

14           36. Plaintiff and the Class Members incorporate the allegations above as  
15 if fully set forth here.

16           37. Defendants are "persons" under Cal. Civ. Code § 1761(c).  
17

18           38. Plaintiff and the Class Members are "consumers," as defined by Cal.  
19 Civ. Code § 1761(d), who purchased services from Hotwire.

20           39. By failing to disclose the true cost of its services, Hotwire engaged in  
21 unfair or deceptive acts or practices prohibited by the CLRA, Cal. Civ. Code  
22 § 1770, including (1) advertising the services with the intent to sell them not as  
23 advertised; (2) making false or misleading statements of fact concerning reasons  
24 for, existence of, or amounts of price reductions; and (3) representing that  
25 transactions confer or involve rights, remedies, and obligations which they do not.  
26  
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1           40. Hotwire owed Plaintiff and the Class Members a duty to disclose the  
2 true charges for its services because it possessed exclusive and superior knowledge  
3 of the true charges and did not disclose the true charges.  
4

5           41. Information regarding the true charges for Hotwire's services is  
6 material to a reasonable consumer in deciding whether to purchase services from  
7 Hotwire.  
8

9           42. Hotwire's unfair and deceptive acts and practices were therefore likely  
10 to and had a tendency or capacity to deceive reasonable consumers.  
11

12           43. As a result of its CLRA violations, Hotwire caused actual damage to  
13 Plaintiffs and the Class Members including, inter alia, causing them to overpay for  
14 services.  
15

16           44. In accordance with Civil Code § 1780(a), Plaintiffs and the Class  
17 Members seek injunctive and equitable relief for Hotwire's CLRA violations. In  
18 accordance with Civil Code § 1782(d), Plaintiffs and the Class Members will  
19 provide notice of the violations described here and demand that they be rectified by  
20 certified mail to Hotwire's principal place of business in California and then amend  
21 this Complaint to include a request for damages, including actual and punitive  
22 damages pursuant to § 1780. Plaintiffs and Class Members request that this Court  
23 enter such orders or judgment as may be necessary to restore to any person-in-  
24 interest any money which may have been acquired by means of such unfair  
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1 business practices, and for such other relief, including attorneys' fees and costs, as  
2 provided in Civil Code § 1780, and for such other relief set forth below.

3  
4 **Count Three: Violation of California's**  
5 **False Advertising Law (Cal. Bus. & Prof. Code § 17500, et seq.)**

6 45. Plaintiff and the Class Members incorporate the allegations above as  
7 if fully set forth here.

8 46. California Business and Professions Code § 17500 prohibits  
9  
10 (1) inducing the public to enter into any obligation relating to the performance of  
11 services by means of any untrue or misleading statement disseminated over the  
12 Internet; and (2) making or disseminating untrue or misleading statements over the  
13 Internet with the intent not to sell the services at the advertised price.

14  
15 47. Hotwire knew or should have known that the statements on its website  
16 regarding the prices of its services were untrue or misleading. Hotwire nevertheless  
17 made and disseminated those statements from the State of California in order to  
18 induce members of the public to purchase services from Hotwire.

19  
20 48. Hotwire made and disseminated untrue and misleading statements over  
21 the Internet from the State of California regarding the price of its services with the  
22 intent not to sell the services at the advertised price.

23  
24 49. As a result of Hotwire's misleading statements, Plaintiff and Class  
25 Members purchased services they would not otherwise have purchased and/or paid  
26 more for services than they would otherwise have paid.  
27  
28

**Count Four: Violation of California's Unfair  
Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)**

50. Plaintiff and the Class Members incorporate the allegations above as if fully set forth here.

51. California Business and Professions Code section 17200 prohibits any "unlawful, unfair, or fraudulent business act or practices." Hotwire has engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.

52. Hotwire has violated the unlawful prong of section 17200 by its violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* and False Advertising Law, Cal. Civ. Code § 17500, as set forth above.

53. Hotwire has violated the fraudulent prong of section 17200 because its material misrepresentations regarding the cost of Hotwire's services were both likely to and/or had a tendency or capacity to deceive a reasonable consumer. As a result of Hotwire's misleading statements, Plaintiff and Class Members purchased services they would not otherwise have purchased and/or paid more for services than they would otherwise have paid.

54. Hotwire has violated the unfair prong of section 17200 because the acts and practices set forth in the Complaint, including the false representations regarding the cost of Hotwire's services, offend established public policy and cause harm to consumers without providing offsetting benefits. Hotwire's conduct has also impaired competition within the travel services market and has prevented

1 Plaintiff and the Class Members from making fully informed decisions about  
2 whether to purchase travel services and/or how much they should pay for such  
3 services.  
4

5 55. Plaintiff has standing to pursue this claim on behalf of the Class  
6 Members because he has suffered an injury in fact, including the loss of money or  
7 property, as a result of Hotwire's unfair, unlawful, and/or deceptive practices.  
8

9 56. All of the wrongful conduct alleged here occurred, and continues to  
10 occur, in the conduct of Hotwire's business. Hotwire's wrongful conduct is part of  
11 a pattern or generalized course of conduct that is still perpetuated and repeated in  
12 the State of California.  
13

14 57. Plaintiff and the Class Members request that the Court enter such  
15 orders or judgments as may be necessary to enjoin Hotwire from continuing its  
16 unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the Class  
17 Members any money Hotwire acquired by unfair competition, including restitution  
18 and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203  
19 and Cal. Civ. Code § 3345, and for such other relief set forth below.  
20  
21

## 22 **VI. DAMAGES AND OTHER RELIEF**

23  
24 58. Plaintiff and the Class Members seek damages in the form of  
25 reimbursement of undisclosed charges, plus pre-judgment interest, at the highest  
26 rate allowed by law, on the damages awarded.  
27  
28

1           59.       Plaintiff and the Class Members seek restitution and restitutionary  
2 disgorgement of money Hotwire obtained through its unfair, unlawful, and/or  
3 deceptive practices.  
4

5           60.       Plaintiff and the Class Members seek additional exemplary damages  
6 due to the fact that Defendants' misrepresentations are contrary to Defendants'  
7 clear contractual obligations and are thus in bad faith.  
8

9                               **VII. PRAYER FOR RELIEF**

10           WHEREFORE, Plaintiff and the Class Members pray for relief as  
11 follows:  
12

- 13           1. An order certifying the class proposed herein under Federal Rule 23,  
14 appointing Plaintiff as class representative, and appointing Plaintiff's  
15 undersigned counsel as Class counsel;  
16  
17           2. Judgment for all damages caused by Defendants' actions;  
18  
19           3. Injunctive relief requiring Defendants to stop their practice of refusing to  
20 provide contracted-for services for agreed-upon prices;  
21  
22           4. Attorney's fees, expenses, and costs;  
23  
24           5. Pre-judgment and post-judgment interest as provided by law; and  
25  
26           6. Such other relief the Court deems just, equitable and proper.  
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28

**X. JURY TRIAL DEMAND**

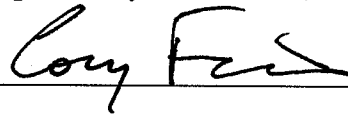
Plaintiff demands a trial by jury on all claims so triable.



1 Dated: November 26, 2012

Respectfully submitted,

2  
3 By:



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28 **ATTORNEYS FOR PLAINTIFF**